UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CN.9/SER.C/ABSTRACTS/22
24 March 1999

ORIGINAL: ENGLISH

UNITED NATIONS COMMISSION
ON INTERNATIONAL TRADE LAW

CASE LAW ON UNCITRAL TEXTS
(CLOUT)

Contents

Page

I. Cases relating to the United Nations Sales Convention (CISG) 2

II. Additional information 3

INTRODUCTION

This compilation of abstracts forms part of the system for collecting and disseminating information on court decisions and arbitral awards relating to Conventions and Model Laws that emanate from the work of the United Nations Commission on International Trade Law (UNCITRAL). Information about the features of that system and about its use is provided in the User Guide (A/CN.9/SER.C/GUIDE/1). CLOUT documents are available on the website of the UNCITRAL Secretariat on the Internet (http://www.un.or.at/uncitral).

Unless otherwise indicated, the abstracts have been prepared by National Correspondents designated by their Governments. It should be noted that neither the National Correspondents nor anyone else directly or indirectly involved in the operation of the system assumes any responsibility for any error or omission or other deficiency.

Copyright © United Nations 1999
Printed in Austria

All rights reserved. Applications for the right to reproduce this work or parts thereof are welcome and should be sent to the Secretary, United Nations Publications Board, United Nations Headquarters, New York, N.Y. 10017, United States of America. Governments and governmental institutions may reproduce this work or parts thereof without permission, but are requested to inform the United Nations of such reproduction.

V.99-82565

I. CASES RELATING TO THE UNITED NATIONS SALES CONVENTION (CISG)

Case 238: CISG 1(1)(b); 71(1)(a); 73(2)
Austria: Supreme Court; 2 Ob 328/97t
12 February 1998
Original in German
Published in German [1998] Zeitschrift für Rechtsvergleichung 158

An Austrian buyer, defendant, ordered umbrellas from a Czech seller, plaintiff. The parties agreed to a reduction of the purchase price inasmuch as the goods were defective. However, the buyer did not pay for two subsequent deliveries. Upon the seller's request for payment, the buyer showed the seller a copy of a bank payment order. Then, the buyer cancelled the bank payment order without informing the seller. Lacking liquidity, the seller could neither produce nor deliver goods ordered. The seller, therefore, suspended performance of the contract and sued the buyer. The buyer notified the seller of its compensation claim arising from non-compliance with the contract.

The Supreme Court held that although the contract between the two parties had been concluded before the CISG had entered into force in the Czech Republic, the contract was governed by the CISG under its article 1(1)(b) since the parties had agreed to the application of Austrian law.

The Supreme Court further held that a seller who acts in conformity with a contract may choose between the remedies available under CISG articles 71(1)(a) and 73(2). Neither the fact that the buyer had not paid the purchase price for a number of deliveries nor the cancellation of the bank payment order indicated with a sufficient degree of probability a serious deficiency in the buyer's ability to perform the contract or in its creditworthiness in keeping with CISG article 71(1)(a). The seller's right, therefore, to suspend performance had not been established.

Accordingly, the Supreme Court overturned the decision of the appellate court and remanded the case to the court of first instance for consideration of other issues.

Case 239: CISG 1(1)(a); 14(1); 18(1)
Austria: Supreme Court; 3 Ob 512/96
18 June 1997
Original in German
Published in German in [1998] Juristische Blätter 255

An Austrian buyer, defendant, ordered shoes from a German company after the presentation of a model of a pair of shoes by Mr. J, an employee of the German company. The buyer's order was sent to the German company, which transmitted it to an Italian seller, plaintiff.

Referring to the buyer's order, employees of the seller requested and received the approval of the buyer for the colour of the shoes. After delivery of the shoes, the seller sent the invoice to the buyer, who, at the request of Mr. J, transmitted a cheque to the German company in order to pay the seller. However, the seller never received payment either from the buyer or Mr. J. The seller, therefore, sued the buyer for the purchase price of the shoes and interest.

The Supreme Court, in holding that the CISG was applicable to the case under its article 1(1)(a), found that it was not clear whether the buyer had concluded the contract with the German company or

with the seller. Consequently, it had to be determined whether Mr. J was an independent mercantile agent who could accept an order from the buyer on the seller's behalf or whether Mr. J had merely transmitted the order (contract) to the seller. No contract could be deemed to have been concluded if Mr. J was not an independent mercantile agent or if the buyer was not aware that the order was sent to the seller. In addition, from the communications between the employees of the seller and of the buyer alone, no order from the buyer to the seller and therefore no contract between them could be construed inasmuch as the buyer's employees could not assume the seller's behaviour to be an acceptance (articles 14(1) and 18(1) CISG). Accordingly, the Supreme Court remanded the case to the court of first instance for a determination of the independent mercantile agent issue.

Case 240: CISG 1(1)(a); 9(2)
Austria: Supreme Court; 2 Ob 191/98x
15 October 1998
Original in German
Unpublished

The plaintiff was involved in the wood trade and had his place of business in Austria. The Austrian defendant had his place of business in Italy and was also involved in the wood trade.

The plaintiff's son signed a contract with the defendant for the purpose of taking part in the defendant's enterprise. The plaintiff delivered wood for several years to the defendant. The defendant paid the plaintiff a certain amount for the wood delivered, albeit without referring to a specific delivery or invoice. The plaintiff claimed payment of the outstanding invoices as well as interest.

The Supreme Court remanded the case to the court of first instance, holding that the place of business of the parties in different Contracting States and not the citizenship of the parties was relevant for a determination as to whether the CISG applied to the case. Accordingly, the Supreme Court decided that the CISG was applicable to the case under its article 1(1)(a). Moreover, owing to differences in the time limits for notice of lack of conformity between Austrian usages in the trade in wood and the CISG, the Supreme Court held that the court of first instance should examine whether the conditions set forth in article 9(2) CISG as regards usages had been met, in particular whether they were widely known and regularly observed in the trade.

II. ADDITIONAL INFORMATION

Document A/CN.9/SER.C/ABSTRACTS/21

Corrigendum

(ENGLISH TEXT ONLY)

Case 236

Caption and third paragraph: the reference to CISG article "4(2)(a)" *should read* "4(a)".

* * *